



July 18, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-3107

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149556.

The Texas Department of Public Safety (the "department") received a request for information concerning a department employee, including his duties and promotions, the people who recommended him, his status on December 27, 2000, and information concerning courses the employee has taken on public relations. You indicate that you do not have information responsive to the request for the employee's status on December 27, 2000.¹ You further indicate that you will release information responsive to the remainder of the request, except for information you contend is excepted from disclosure under section 552.101 and 552.117 of the Government Code. The requestor has also submitted comments for our review. See Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal financial information generally is excepted from public disclosure under common law privacy, except to the extent the information reflects a

¹We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

transaction between the employee and the governmental body. Open Records Decision Nos. 600 at 9-12 (1992), 523 at 3-4 (1989), 373 at 3 (1983). You indicate that the submitted information contains personal financial information of the subject of the request. Based on your argument and our review of the information we agree that a portion of the submitted information must be withheld as personal financial information under common law privacy and section 552.101 of the Government Code. We have marked this information.

Section 552.117(2) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former peace officers,² regardless of whether the peace officer requested to keep this information confidential under section 552.024 of the Government Code. You have highlighted information you believe is excepted from disclosure under section 552.117(2). We agree that you must withhold this information, which we have marked.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref.: ID# 149556

Enc.: Submitted documents

c: Ms. Melinda Honerkamp
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Jersey Village, Texas 77040
(w/o enclosures)